

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
TEXAS HOUSTON DIVISION

JOHN J. McPHILLIPS
Plaintiff,

V.

CONROE INDEPENDANT SCHOOL
DISTRICT
Defendant.

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C.A. No.4:16-cv-02463

**PLAINTIFF'S MOTION FOR LEAVE TO FILE A REPLY BRIEF TO PENDING
MOTION FOR SUMMARY JUDGEMENT**

TO THE HONORABLE JUDGE OF SAID COURT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS.

Comes now Plaintiff John J. McPhillips files this motion for Leave to file a reply brief
in pending motion for summary judgement and would show as follows:

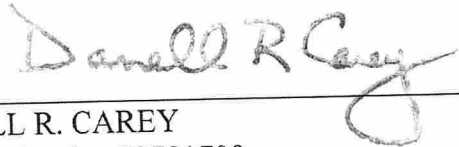
1. On August 1st Defendant filed Motion for summary judgement.
2. The Court issued a stay for all motions until September 5th, 2017 due to Hurricane Harvey.
3. Plaintiff attempted to file response to summary judgement on September 5th, 2017 several times, however we encountered technical difficulties with the electronic filing system for the court. Plaintiff tried to too reset the password several times.
See Attached
4. Unfortunately, our Pacer Account was deactivated for Inactivity. See Attached
5. The Court's clerk assigned a new login and password on September 7, 2017.

This relief is not sought for purposes of delay , but so Justice may be served. Good

cause exists to allow such leave.

Respectfully submitted,

Of Counsel:



DARRELL R. CAREY
State Bar Number 03791700

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned, attorney for Plaintiff, hereby certifies that a true and correct copy of the foregoing Motion for leave to file reply to Defendant's Motion For Summary Judgement on Sep 7th 2017, served upon all counsel of record as follows:

- _____ (a) by delivery in person;
- _____ (b) by agent or courier receipted delivery;
- _____ (c) by certified mail, return receipt requested;
- x (d) by facsimile.
- _____ (e) by electronic service or electronic mail

Paul Lamp
5718 Westheimer
Houston, Texas 77057
Fax: 713/960-6025



Darrell R. Carey



Darrell Carey <lawofficesofdarrellrcarey@gmail.com>

Password

3 messages

Darrell Carey <lawofficesofdarrellrcarey@gmail.com>

Tue, Sep 5, 2017 at 10:48 PM

To: pacer@psc.uscourts.gov

My Pacer Account Number is 4354624. My username is darrellrcarey. Please let me know what my password is. I requested a new one, but an email with new password never arrived.

Darrell Carey <lawofficesofdarrellrcarey@gmail.com>

Tue, Sep 5, 2017 at 10:49 PM

To: pacer@psc.uscourts.gov

My Pacer Account Number is 4354624. My username is darrellrcarey. I requested a new password, but the email did not come through.

pacermail@psc.uscourts.gov <pacermail@psc.uscourts.gov>

Wed, Sep 6, 2017 at 8:44 AM

To: Darrell Carey <lawofficesofdarrellrcarey@gmail.com>

Your account was temporarily deactivated for a period of inactivity. We have reactivated it. You may log in using your existing ID/PW now or request a password reset again.

Thank you,
Les

PACER Service Center

Phone: 210-301-6440

Toll Free: 800-676-6856

For Frequently Asked Questions: <http://www.pacer.gov/psc/hfaq.html>

For Account Information: <https://www.pacer.gov/psco/cgi-bin/psclogin.pl>

From: Darrell Carey <lawofficesofdarrellrcarey@gmail.com>

To: pacer@psc.uscourts.gov,

Date: 09/05/2017 10:49 PM

Subject: Password

[Quoted text hidden]



Darrell Carey <lawofficesofdarrellrcarey@gmail.com>

Password

pacermail@psc.uscourts.gov <pacermail@psc.uscourts.gov>

Wed, Sep 6, 2017 at 8:44 AM

To: Darrell Carey <lawofficesofdarrellrcarey@gmail.com>

Your account was temporarily deactivated for a period of inactivity. We have reactivated it. You may log in using your existing ID/PW now or request a password reset again.

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Subject: Password

[Quoted text hidden]

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C.A. No.4:16-cv-02463

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY
JUDGEMENT**

Plaintiff, John J. McPhillips through his counsel of record , hereby responds to
Defendant's Motion for Summary Judgement.

INTRODUCTION

Plaintiff, John J. McPhillips is 66 years old and "is the hardest working police officer in the Conroe Independent School District." His evaluations were excellent. He was "more than punctual". If work starts at 7:00, he shows up at 6:30. His supervisors feel that he volunteers for more overtime than any other Police officer in the CISD Police Department. John was the first K-9 bomb dog handler in the history of CISD. He won local, state and National awards including the National Field Trial Olympics during his 10 year tenure as K-9 bomb dog handler for CISD. He worked Super Bowl XLV in Dallas and Super Bowl XLVII in Louisiana in conjunction with the FBI, Secret Service and ATF. His partner, Fire, passed away at the age of 6.

Despite being the most experienced and better trained K-9 Officer applying for the vacant K-9 bomb dog officer position, CISD Chief William Harness demoted John to directing traffic

and selected a less qualified, younger Officer, Floyd Meeks because CISD wanted to “add longevity” to the position. CISD felt John did not have the “longevity” needed to be a bomb dog handler any longer. John ended up training his younger , less qualified replacement to take over his job. There is no evidence that Officer Meeks had any K-9 training whatsoever, only having “animal training” while working in the prison system.

Defendant argues that McPhillips has no evidence that he suffered an adverse employment action and was not replaced by a younger employee. Defendant also argues that CISD has legitimate , non discriminatory reasons for demoting McPhillips.

ARGUMENT AND AUTHORITY

1. There is evidence showing that McPhillips suffered an adverse employment action.

John J. McPhillips has been employed by CISD for 18 years as a police officer.

Officer McPhillips was employed as a K-9 bomb dog officer for 10 years. He was the first k-9 bomb dog officer in the history of CISD, starting the program from the ground up. Officer McPhillips grew and excelled in this position, winning numerous State and National field trials and competitions including the K-9 Olympics. Exhibit A at 70,19. McPhillips provided security for President Bush and two Super Bowls. Exhibit A at 18,82.

2. Chief William Harness stated that McPhillips was a “source of pride” for the school district and provided “security” and “comfort “ for the residents of Houston and Conroe. Exhibit B at 40,41,42. McPhillips was always willing to work extra hours and had excellent yearly evaluations . Exhibit B at 35. McPhillips is and was “more than punctual” and the hardest working man on the CISD police force .Exhibit C at

33. Chief William Harness , who solely decided to demote McPhillips from K-9 Bomb Dog Officer to working traffic detail at Caney Creek , claims McPhillips did Excellent work as a K-9 Bomb Dog Officer and had NO issues with McPhillips as far as employment as a K-9 Bomb Dog Officer. Exhibit B at 82 and 83

3. A job reassignment can constitute an actionable demotion if it negatively impacts an employee's job duties, compensation or benefits. See Thompson v. City Of Waco, Tex., 764 F3d 500, 503 (Fifth Cir. 2014). Under this standard, McPhillip's reassignment from a K-9 Officer to a campus Officer at Caney Creek was clearly a demotion. The job reassignment demotion changed McPhillips job duties from being the head of K-9 Bomb Security for Presidential visits and Super Bowls to directing traffic and breaking up fistfights between teenagers. As K-9 Officer , McPhillips would supervise every school campus employee while performing his job duties , including the school Principle See Exhibit A at 24,25.. As a campus officer, his lone supervisory task was directing the order of school bus departure. Exhibit A at 50,51,52. While a K-9 Officer, McPhillips job performance was evaluated on the basis of security field work, sweeping schools and stadiums for bombs, protecting the public from terrorists. A at 50,51,52. As a campus officer, McPhillips was evaluated for spelling and grammatical errors in his daily reports to Chief Harness. Officer McPhillips was demoted from a position of field work to a position that he was ill suited for and struggled mightily. Exhibit C It is clear that his demotion negatively impacted McPhillips job duties.

Defendant's claim that McPhillips demotion did not negatively impact his benefits , however they acknowledge that he did lose the use of a provided vehicle when he was

“reassigned”. Exhibit A at 77,82

Defendant’s claim that McPhillips work hours were comparable after his demotion is disingenuous at best. They point out that his regular work schedule only increased from 42 to 42.5 hours, but fail to mention that his compensation has increased only because of the massive amount of overtime he has to volunteer for to make for the difference in pay. Exhibit B 55,57,58.

REPLACED BY YOUNGER, LESS QUALIFIED INDIVIDUAL

McPhillips was replaced by Floyd Mike Meeks. John McPhillips was 66 years old in July of 2013 when he was demoted to campus officer. Mr. Meeks was 45 years old. Exhibit D. Chief Harness acknowledged that Meeks was younger than McPhillips. Exhibit B at 71. Chief Harness also acknowledges that “longevity” was part of his decision to Promote Meeks to K-9 Bomb Dog Officer over McPhillips. Exhibit B at 71. Chief Harness chose Meeks over McPhillips even though Meeks had no bomb dog experience. Exhibit B at 75. In fact, Meeks had no canine experience whatsoever. Id at 75. Meeks only had “animal” experience while working in the prison system. Id at 75. Moreover, even today in 2017 McPhillips is still the most trained and experienced bomb dog K-9 Officer even though his demotion was in July of 2013. Exhibit B at 73.

CISD DOES NOT OFFER A NON DISCRIMINATORY REASON FOR MCPHILLIPS DEMOTION

1. Chief Harness admits that McPhillips had good evaluations as a K-9 Dog Officer. He states that McPhillips did well in field trial competitions , was on call anytime,

and was “a source of pride” and “security” for the Community. Exhibit B at 40,41,42.

2. Most importantly, Chief Harness, who solely made the decision to demote McPhillips , states that he has no issues with McPhillips work performance as a K-9 Bomb Officer. In fact , Harness describes McPhillips work as a K-9 Officer as “excellent” . Exhibit B at 82,83.

If McPhillips was such an excellent , punctual , hard working, award winning K-9 Officer, then why would CISD demote him to an on campus Officer and not allow him to continue his excellent work as a K-9 Officer? Because he was 66 years old. Chief Harness tries to gloss over the word “longevity” and try to explain that his use of the word longevity was in reference to the” longevity of the dog. “

3. Chief Harness never even interviewed Mike Meeks for the K-9 position.

McPhillips formally asked Harness for the K-9 Officer position. Exhibit B at 63.

4. Chief Harness committed borderline perjury in his testimony when he claims he “did not know” how old McPhillips was in July of 2013. Exhibit B at 70.

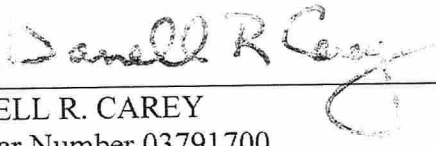
When , in fact, he knew that he and McPhillips were only 9 months apart in age. Exhibit B at 70,71,72.

PRAYER

John J. McPhillips has presented a mountain of evidence to make a prima facie case and show that any other reason for his demotion is merely pretext. Defendant has failed to prove that they are entitled to the relief they seek as a matter of law. We respectfully ask the Court to dismiss this summary judgement.

Respectfully submitted,

Of Counsel:



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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned, attorney for Plaintiff, hereby certifies that a true and correct copy of the foregoing Response to Defendant's Motion for Summary Judgement was on the 7th day of September, 2017, served upon all counsel of record as follows:

- ☐ (a) by delivery in person;
- ☐ (b) by agent or courier receipted delivery;
- ☐ (c) by certified mail, return receipt requested;
- ☒ (d) by facsimile.
- ☐ (e) by electronic service or electronic mail

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Darrell R. Carey